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7 *Next Friends to, and [proposed] Co-Guardians Ad Litem for, Plaintiff Clotee Downing*

8 **UNITED STATES BANKRUPTCY COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION**

10 IN RE:

11 2nd CHANCE INVESTMENT GROUP,
12 LLC,

13 Debtor

14
15 CLOTEE DOWNING, an incompetent
16 individual,

17 Plaintiff

18 v.

19
20 2ND CHANCE INVESTMENT GROUP;
21 RAYSHON ANDREW FOSTER a.k.a.
22 RAY FOSTER, an individual; SONJA
23 FOSTER, an individual; DOES 1 – 100,

24 Defendants

Case No.: 8:22-bk-12142-SC
Chapter 11 Case

Adv. Case No.: 8:23-ap_____ -SC

**NOTICE OF EMERGENCY MOTION
AND EMERGENCY MOTION TO
ALTER OR AMEND ORDER,
AND/OR FOR RELIEF FROM
ORDER, AUTHORIZING SALE OF
REAL PROPERTY, ETC. (DOC 313)**

[37472 Yorkshire Drive, Palmdale, CA
93550; APN: 3019-047-055]

**F.R.Civ.P. Rule 59 and/or 60(b) or (d) et
seq. / F.R.Bnk.P. Rule 9023 and/or 9024**

Date Order Entered: Nov. 20, 2023

Date Motion Filed: Dec. 4, 2023

Hearing Date: December _____, 2023

Hearing Time: _____ AM / PM

Hearing Place: Courtroom 5C

411 West Fourth Street

Santa Ana, CA 92701

IN PERSON HEARING REQUESTED

1 **TO ALL INTERESTED PARTIES, AND TO THE CLERK OF THE**
2 **COURT, PLEASE TAKE NOTICE** that as soon as can be practically arranged by the
3 clerk of the court, in Courtroom 5C of the courthouse at 411 West Fourth Street, Santa
4 Ana, CA 92701, Plaintiff Clotee Downing intends to move this Court for relief from this
5 Court's November 20, 2023 Order authorizing the sale of her home at 37472 Yorkshire
6 Drive in Palmdale, CA 93550, pursuant to F.R.Civ.P. Rule 59 and/or 60(b) or (d) et seq. /
7 F.R.Bnk.P. Rule 9023 and/or 9024.

8 This Motion is based upon the memorandum of points and authorities contained
9 herein, and supporting declarations that will be filed.

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7	23	

MEMORANDUM OF POINTS AND AUTHORITIES

I. TIMELINESS OF DOWNING'S APPEARANCE AND MOTION

Downing arriving late to proceedings due to unconscionable elder abuse, neglect and abandonment by debtor, debtor's counsel, and family members. Guardians had no ability to file sooner: did not have custody of Downing, and were being bullied and denied access to information by those who did. Only got custody of Downing in mid-October, and learned of proceeding on Nov. 9 2023. AP and motion being filed in reasonable time after that.

Downing has no understanding of the situation, and no capacity to exercise her own legal rights, or hire someone to do so for her. Debtor, debtor's counsel, and CRO all knew of situation. They had ethical duty of candor with the court. Yet despite their knowledge, instead conspired to terrorize Downing's unsophisticated and naive adult children into violate Downing's legal and civil rights, and commit felony elder financial abuse and neglect against her (lawyers & kids).

But Downing had no capacity to waive her legal rights, nor are her legal rights voidable due to felony elder abuse, neglect or abandonment committed against her by her children. Downing has protections under 5th and 14th amendment that cannot be waived on her behalf by ignorant, incompetent, abusive and neglectful children who have no lawful POA or conservatorship over her. Downing's guardians respectfully submit that both the Debtor and its counsel had an ethical duty to not permit elder abuse to be

1 committed against Downing. Having done so anyway, Debtor and their counsel come to
2 this Court with unclean hands, and therefore cannot complain about untimeliness of
3 Downing's appearance.

4 **II. FACTUAL BACKGROUND**

5 On November 20, 2023, this Court entered an Order (Doc. 313), approving the sale
6 of the real property at 37472 Yorkshire Drive in Palmdale, CA 93550 ("Yorkshire
7 property"). For the reasons stated in the Argument section below, this Court should and
8 must reverse this sale, and cause the Yorkshire property to be returned to its true lawful
9 owner, even if it means ordering the Debtor, the Debtor's principals and/or their counsel
10 to repurchase it from the Buyer approved by this Court in its November 20, 2023 order.

11 The Debtor, by and through multiple documents signed by its co-principal
12 Defendant Rayshon Foster ("R. Foster") and/or Debtor's counsel, repeatedly told this
13 Court that the Debtor possessed a lawful right and title to the Yorkshire property, and
14 listed it as real property owned by the Debtor's estate that was lawfully subject to sale.

15 The Debtor and its counsel mislead this Court, and selectively withheld documents
16 that would have revealed the truth. As a function of law under Cal. Civ. Code §1695.12,
17 the Debtor never possessed any lawful title to the Yorkshire property, because the Debtor
18 allegedly "acquired" the Yorkshire property from a homeowner in foreclosure, and the
19 Home Equity Sales Contract the Debtor's principal had that owner sign included a clause
20 giving that homeowner the right to repurchase her home. This Court can and should take
21 notice of the Debtor's occlusive judicial admission of this fact at the bottom of pg. 101 of
22 Doc. 271 (Debtor's Motion for Order Authorizing Sale of Real Property). Therefore,
23 even assuming *arguendo* that the Debtor ever had any lawfully cognizable interest in the
24 Yorkshire property, that interest was at best a security interest as a loan or mortgage
25 provider to the property owner, who was never in any contractual arrears to the Debtor.

26 The true lawful owner of the Yorkshire property is Clotee Downing ("Downing"),
27 an 80-year-old African American great grandmother who only has a fourth grade
28 education, a comparable literacy level, and is now in the end stages of Alzheimer's

1 disease. Downing started showing symptoms of Alzheimer's in 2014, and was medically
2 diagnosed in 2017. By 2018, Downing legally qualified as a person of unsound mind
3 under Cal. Civ. Code § 39(b), in that she was substantially unable to manage her own
4 financial resources, and had been repeatedly unable to resist innumerable acts of fraud
5 and undue influence stretching back to 2015.

6 Despite Downing's growing mental incapacitation, and expressions of concern by
7 various family members that Downing could no longer take care of herself, the family
8 members in direct and sustained contact with Downing all neglected to take any action to
9 actually protect her best interests. No one ever took responsibility to ensure Downing
10 signed a Power of Attorney agreement, or initiated a conservatorship proceeding.
11 Downing was instead allowed to neglectfully slip past the threshold of legal competency
12 to contract in 2019, without ever having someone legally appointed to make decisions on
13 her behalf to protect her best interests.

14 By late 2019, as a direct result of her repeated inability to resist fraud, undue
15 influence, manage her own financial affairs, or comprehend the facts or responsibilities
16 surrounding her home ownership, Downing was in arrears on her mortgage, and facing a
17 non-judicial foreclosure. From late 2019 to late 2020, members of Downing's family
18 arranged for her to have meetings with four (4) different real estate brokers and one
19 attorney, to discuss her situation and options. In all five (5) of these meetings, Downing
20 repeatedly demonstrated that she had multiple Alzheimer's-related mental deficits - as
21 forth in Cal. Probate Code § 811 - which rendered her unable to understand what was
22 going on or being discussed, unable to lawfully contract about her mortgage or her
23 financial affairs, and unable to lawfully grant a conveyance of the title of her home.

24 Then, on October 23, 2020 – a mere eleven (11) days before a scheduled November
25 3, 2020 foreclosure sale - R. Foster, one of the two co-principals of the Debtor, appeared
26 at the front door of Downing's Yorkshire property, with an offer to "save her home" from
27 foreclosure. In the oral contracts R. Foster repeatedly made with Downing and members
28 of her family, R. Foster said he would pay off Downing's back due mortgage payments.

1 All Downing had to do was sign over her home to R. Foster, then pay him back in the
2 form of \$1,000 a month for five years (i.e. \$60,000), after which R. Foster said he would
3 then give the Yorkshire property back to Downing to keep, free of any liens or liabilities.

4 The next day, October 24, 2020, R. Foster came back to Downing's Yorkshire
5 property to complete the "deal." After having met and talked with Downing on October
6 23, 2020, R. Foster apparently realized that Downing was mentally incompetent to
7 contract, and arrived on October 24 bearing what he presumably thought would be an
8 effective solution to this problem. Upon walking in the door, R. Foster handed
9 Downing's live-in adult son Nolan White ("Nolan") an 8.5 x 11" sheet of yellow lined
10 notebook paper, on which R. Foster had hand-printed out a statement for Nolan to sign.
11 The statement was an attestation that Downing was of sound mind, and that Nolan was a
12 witness to her signing documents with R. Foster. Nolan – who himself only has a 9th
13 grade education, never went to medical school, had absolutely no power of attorney or
14 conservatorship to allow him to lawfully act on Downing's behalf, and was facing
15 homelessness in ten days unless Downing's home was "saved" from foreclosure – signed.

16 Then, in the presence of Nolan, R. Foster rushed Downing through the process of
17 signing pages of documents, including a 32-page California Home Equity Sales Contract
18 (EXHIBIT X), and a 16-page Notice of Default Purchase Agreement (EXHIBIT X). R.
19 Foster did so by repeatedly placing his finger on Downing's paperwork, telling her to
20 initial or "sign here," and then instructing her to turn the page. R. Foster didn't give
21 Downing time to read any of the pages, and never allowed Nolan to see any of the
22 documents. Even if R. Foster had given Downing a chance to read these documents,
23 Nolan observed that Downing was not wearing the glasses she needed to read anything
24 (furthermore, Downing's guardians ad litem have subsequently asked Downing to read
25 these documents, but due to her fourth grade literacy level, Downing is not able to do so).

26 In the process of signing these documents on October 24, 2020, Downing's
27 handwriting exhibited clear signs of Alzheimer's-related loss of motor control. On the
28 main signature line of the Home Equity Sales Contract, Clotee Downing both mistakenly

1 wrote her name as Clotee Grayson (a maiden name she has not used in over 45 years),
2 and wrote an incorrect date of October 25, 2020. When Downing had finished signing, R.
3 Foster collected all the documents, and took them with him. He did not leave Downing a
4 copy, as legally required by Cal. Civ. Code §§ 1695.5(c) and 1695.6(a).

5 The mentally incompetent Downing was not even able to articulate R. Foster's
6 name. She simply referred to him as "my savior." R. Foster repeatedly and knowingly
7 exploited Downing's Alzheimer's deficits in order to gain her trust, so that he could
8 financially abuse her. For example, Downing repeatedly told R. Foster that she worked as
9 a school bus driver in South Central Los Angeles (as she has a habit of telling everyone).
10 R. Foster would respond to this information by smiling at Downing, telling her that he
11 had been a student on her school bus, and that he remembered her driving him to school.
12 Downing believed this confidence-man act, and replied that she also remembered R.
13 Foster riding on her bus, even though she couldn't currently remember R. Foster's name.

14 A few hours after leaving Downing's home on Saturday, October 24, 2020, R.
15 Foster then called Downing's landline, and asked to speak with Nolan - *not* Downing.
16 When Nolan got on the line, he found himself on a purported three-way call between R.
17 Foster and an unidentified, alleged female employee of Downing's bank. R. Foster told
18 Nolan words to the effect of, "I've got the bank on the phone so you can hear this, so
19 ya'll know that you don't have to leave out of the house, I'm gonna pay the bill." The
20 purported female bank employee then started arguing with Foster, saying "it's too late to
21 pay" the bank, and avoid the foreclosure sale. R. Foster snapped back at the female,
22 "what are you gonna do? Put an 81 year old woman in the street? Is that what you're
23 gonna do? ... come on ... come on," and similar words to that effect. The alleged bank
24 employee then continued to argue back against R. Foster, saying "It's to late" to pay.

25 R. Foster then told Nolan, "hold on for a minute, I'm gonna speak to the lady," and
26 placed Nolan on hold. After a brief pause in silence, R. Foster then came back on the line,
27 sighing in relief: "[SIGH] They accepted, man!" R. Foster then thanked the alleged bank
28 employee, with words to the effect of "you don't know how you blessed the lady, cause

1 they was days on getting out of the house! Now they don't have to leave the house."
2 Foster then said, "you see Nolan? I took care of it. I'll be over there in a day or two."

3 Nolan genuinely believed this had been a real phone call between Foster and an
4 employee of Downing's mortgage provider, Selene Finance. **Downing's Guardians**
5 **have recently spoken with Selene, and confirmed this entire phone call was a fake,**
6 telephone theatre con-man performance by R. Foster and this unidentified woman, whom
7 the Guardians suspect and allege to have been R. Foster's wife, Defendant Sonja Foster
8 ("S. Foster"). According to Selene's phone records, Selene did not receive any phone
9 calls regarding Downing's mortgage account on either Friday October 23, Saturday
10 October 24, or Sunday October 25, 2020. The only phone call Selene did receive during
11 this period was a call from S. Foster, at 8:08 AM PST on Monday, October 26, 2020,
12 asking for Selene's FAX number. Then, at approximately 10:44 AM PST that same day,
13 Selene received a FAX from the Debtor that included the 16-page Notice of Default
14 Purchase Agreement Downing had signed on October 24, 2020. In addition, Selene
15 reports that R. Foster was never an authorized user on Downing's account; accordingly,
16 R. Foster would not have been able to simply call Selene Finance, and speak with a
17 representative about Downing's account. The apparent true purpose of the Fosters' fake
18 October 24, 2020 phone call was to deceive Nolan into deepening his trust in R. Foster,
19 so that R. Foster would have an easier time financially exploiting Downing.

20 Accordingly, **the Debtor never paid one single penny of compensation to**
21 **Downing for the Yorkshire property.** Instead, Ray Foster – who [California Department](#)
22 [of Real Estate public records](#) show lacks the California Real Estate Sales License
23 required by Cal. Civ. Code § 1695.17 *et seq.* to lawfully engage in the purchase of any
24 California home in foreclosure - deceived the mentally incompetent Downing into
25 signing over her home to the Debtor **for free.** The Fosters caused the Debtor to prepare
26 real estate and escrow documents that falsely claimed the Debtor paid \$300,000 for the
27 Yorkshire property. After reviewing the multiple fraudulent transfer Complaints filed by
28 the Unsecured Creditor's Committee, Downing's Guardians suspect the Fosters prepared

1 these documents in order to justify fraudulently transferring funds allegedly “paid” for
2 Downing’s Yorkshire property out of the Debtor, and into their own pockets.

3 In truth, the Debtor never even moved Downing’s mortgage loan with Selene
4 Finance out of Downing’s name. Instead, S. Foster – who [does hold a valid California](#)
5 [Real Estate Broker’s license](#) – apparently contacted Selene Finance on October 24, 2020
6 by email, impersonated Downing using stolen social security number information, and
7 then instructed Selene to re-route all mail about Downing’s mortgage to the Debtor’s
8 address, and all phone calls to R. Foster’s (909) 261-2455 phone number. The Fosters
9 also instructed Selene to send all email to an account they controlled,
10 Foster12812@yahoo.com. S. Foster’s apparent goal was to isolate Downing, and keep
11 her and her family members clueless about the Foster’s criminal actions.

12 The Fosters then swindled Downing out of over \$32,000 under R. Foster’s promise
13 to “save her home” from foreclosure. Over \$26,000 of this money was paid in \$1,000
14 installments directly to R. Foster or S. Foster personally (not the Debtor), via difficult-to-
15 trace/tax means such as R. Foster or an emissary coming to Downing’s door to collect
16 cash, or Walmart-to-Walmart wire transfers to R. Foster. After RIA Financial (the vendor
17 that provides the Walmart-to-Walmart service) identified R. Foster as a criminal in May
18 of 2022, and terminated his access to their services, R. Foster instructed Downing’s great
19 granddaughter and co-guardian ad litem Athena Lee to continue sending \$1,000 monthly
20 payments to S. Foster via Venmo. Downing’s family members honored their purported
21 contractual “obligation”, and faithfully paid the Fosters \$1,000 every month through
22 December of 2022, after which the Fosters closed all their online payment methods,
23 disconnected their phones, and disappeared from the internet. In so doing, the Fosters
24 deliberately frustrated Downing’s ability to perform her monthly \$1,000 payment, and
25 thereby waived their right to receive that consideration as a matter of contract law.

26 Starting in February of 2023, the Debtor and its counsel then began threatening to
27 sue the mentally incompetent Downing for non-payment of her monthly \$1,000 “rent.”
28 Multiple members of Downing’s family responded by advising both counsel for the

Debtor, and the Chief Restructuring Officer in the Debtor's bankruptcy case (David Goodrich), of the true facts about Downing's Alzheimer's, the conditions of her purported "contract" with the Debtor / Fosters, and that the Fosters had frustrated performance of the monthly rent payments by closing their accounts and disappearing. Counsel for the debtor nonetheless persisted in their completely frivolous, baseless and malicious campaign of legal terrorism, even threatening to sue Downing's extremely unsophisticated and legally naïve *children* – including an adult child with no residency in or connection to the Yorkshire property whatsoever - unless they summarily removed Downing from her home without Downing's knowing consent. Downing obviously had no legal capacity to consent to any termination of her tenancy or sign any legal document, and her adult children lacked any power of attorney or conservatorship that would allow them to legally act on behalf of Downing, or otherwise legally bind Downing in any way.

The Debtor and its counsel committed a gross fraud upon this Court by falsely claiming that the Yorkshire property was owned by the Debtor, and only had a "tenant." The result is an outcome that is not only literally criminal under multiple California and Federal laws, but also an outrageously obscene, manifest injustice against an innocent, 80-year-old end-stage Alzheimer's patient, whom the principals of the Debtor intentionally targeted for felony elder financial abuse, despite knowing she was legally incompetent to contract.

As a result of this Court's unwitting legal perfection of the years-long real estate fraud scheme by the Debtor's principals, this frail, elderly woman has been sentenced to live out her remaining years in a constant state of confusion as to her surroundings, suffering from endless, tearful mental agony over why she can't "go back home." She is effectively homeless, and has been subjected to multiple instances of horrific felony elder abuse, neglect, abandonment, and theft by multiple family members, as she has been abandoned into the care of successive relatives. For the past two months, she has been living on the living room couch of her granddaughter's home, with no space or

1 belongings of her own, unable to get even a single good night's rest from the lack of
2 privacy and conflicting needs of the home's other residents.

3 Clotee Downing is being continuously tortured as a result of the theft of her home
4 by the Fosters and their attorneys. Because of her end-stage Alzheimer's, Downing will
5 never be able to form the recent memories necessary to adjust and acclimate into a new
6 living environment. Accordingly, no amount of financial compensation can ever make
7 her whole, or bring her one simple night of peace, from the injuries the Fosters and their
8 attorneys have inflicted upon her. Downing needs to be able to go back to the Yorkshire
9 Drive home that she can remember, and under California law, she has a right to do so.

10 Pursuant to the Due Process Clause of both the Fifth and Fourteenth amendments,
11 this Court cannot deprive Downing of her legal rights, under California law, to the return
12 of her wrongfully taken real property without Due Process of law. Said due process must
13 include, at a minimum, reasonable notice, and opportunity to be heard. The Debtors and
14 their attorneys deprived Downing of the right to that notice as part of their efforts to
15 deceive Downing's family members – and this Court – into believing that the Debtor
16 lawfully owned the title to Downing's home, when in fact it did not as a function of law.
17 As part of this scheme to deceive, Downing was not served with notice of the Debtor's
18 bankruptcy proceeding, nor treated as what she legally was: a victim of a series of felony
19 crimes, who at the very most was a mere loan or mortgage customer of the Debtor.

20 **III. ARGUMENT**

21 **A. LEGAL STANDARDS**

22 “A motion to alter and amend a judgment is ‘an extraordinary remedy which
23 should be used sparingly,” *McDowell v. Calderon*, 197 F.3d 1253, 1255 n. 1 (9th
24 Cir.1999). In the Central District of California, it is permissible to file a Rule 59(e)
25 motion on the basis of “a manifest showing of the failure to consider material facts
26 presented to the court before such decision.” CDCA Local Rule 7-18.

27 However, “a Rule 59(e) motion may be granted: (1) if such motion is necessary to
28 correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is

1 necessary to present newly discovered or previously unavailable evidence; (3) if such
2 motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by
3 an intervening change in controlling law.” *Herron*, supra, at 1111, citing *McDowell*,
4 supra. See also *Zimmerman v. City of Oakland*, 255 F.3d 734, 740(9th Cir.2001); *Turner*
5 *v. Burlington N. Santa Fe R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003).

6 “It is appropriate for a court to alter or amend judgment under Rule 59(e)” when a
7 ruling was premised on an incorrect factual assumption. *Duarte v. Bardales*, 526 F.3d
8 563, 567 (9th Cir. 2008) [abrogated on other grounds by *Lozano v. Montoya Alvarez*, 572
9 U.S. 1 (2014)].

10 **B. DEBTOR NEVER OWNED THE YORKSHIRE PROPERTY, AND**
11 **COMMITTED A FRAUD UPON THE COURT BY CLAIMING**
12 **OTHERWISE.**

13 On October 17, 2023, the Debtor, by and through its counsel Rich Sturdevant, filed
14 a Motion for Order Authorizing Sale of Downing’s Yorkshire property (Doc. 271). As
15 part of this Motion, the Debtor selectively filed only pages 5 through 7 of the 32-page
16 Home Equity Sales Contract that R. Foster directed Downing to sign on or about October
17 24, 2020. These three pages appear in the record at pages 100 – 102 of Doc. 271.

18 This Court can and should take judicial notice of the resulting judicial admission
19 the Debtor made at the bottom of pg. 101: **the Debtor’s October 24, 2020 Home Equity**
20 **Sales Contract included an option for Downing to repurchase her home:**

21 “I understand that, I am able to reside at the property for a term of 60
22 month term (renewable every 12 months). 90 days prior to term
23 expiration, **I or a family member, have the opportunity** to qualify
24 themselves to obtain a loan **to purchase the property.**” (Doc 271 at
25 101).
26
27
28

1 Adding on to this existing judicial admission, Downing's Guardians now supply
2 this Court with all 31 pages in their possession¹ of the full 32-page Home Equity Sales
3 Contract that R. Foster directed Downing to sign on October 24, 2020 (attached as
4 EXHIBIT X). This full document makes it clear that the Debtor was purchasing
5 Downing's home while it was in foreclosure, and that the purchase was therefore subject
6 to the protections of California's Home Equity Sales Contract law. The contract further
7 clearly stated that Downing "shall have a lease for the real property," and that said lease
8 "shall have an option to repurchase the property." (pg 9, ¶ (f) of EXHIBIT X).

9 In addition, the oral contract that the Debtor's principal, R. Foster, repeatedly made
10 to Downing and her family members was that he would simply "give" the Yorkshire
11 property back to Downing after she had repaid him \$1,000 a month for five (5) years.

12 These facts are legally significant, because under the protections afforded to
13 Downing by California's Home Equity Sales Contract Act, it means the Debtor never had
14 a lawful ownership interest in Downing's Yorkshire property:

15 **"In any transaction in which an equity seller purports to grant a**
16 **residence in foreclosure to an equity purchaser by any instrument**
17 **which appears to be an absolute conveyance and reserves to himself**
18 **or herself or is given by the equity purchaser an option to**
19 **repurchase, such transaction shall create a presumption affecting**
20 **the burden of proof, which may be overcome by clear and convincing**
21 **evidence to the contrary that the transaction is a loan transaction,**
22 **and the purported absolute conveyance is a mortgage."** Cal Civ.
23 Code § 1695.12.

24
25 ¹ Guardians only have 31 or the 32 pages, because R. Foster eventually provided Downing's family
26 members with a copy of the October 25, 2020 Home Equity Sales Contract, he apparently withheld and
27 did not provide a copy of page 29. Guardians suspect this was intentional. Pages 21 – 32 of the contract
28 are a legally required attached copy of California's Home Equity Sales Contract act. Page 29 contained
the citation of §§ 1695.13 and 1695.14 of that law: the sections that say it is unlawful for any person to
take "unconscionable advantage" of a property owner in foreclosure, and if they do, the contract may be
rescinded anytime during a two-year period.

1 Accordingly, setting aside for a moment the fact that the October 24, 2020 Home
2 Equity Sales Contract is actually void on multiple legal grounds, *if* the Debtor ever had
3 *any* lawfully cognizable interest in Downing's Yorkshire property, that interest was, at
4 best, a security interest as a loan or mortgage provider to Downing.

5 Therefore, as a function of law, Downing was nothing more than a loan or
6 mortgage CUSTOMER of the Debtor. That means the only possible interest of the
7 Debtor's Estate in Downing's Yorkshire property was equivalent to the interest of the
8 estate of any major bank or mortgage provider in their customer's homes.

9 Downing's guardians ad litem are not lawyers, or experts in bankruptcy statutes or
10 case law. But they do understand the basic fact that when a big mortgage provider or
11 bank goes through a bankruptcy, the homes of that bank's loan and mortgage customers
12 do not get summarily seized and sold off by the bankruptcy court as assets to pay off the
13 big bank's creditors. Instead, the expected cash flow from those loan or mortgage
14 customers is treated as a revenue-generating asset of the big bank, which is sold off to
15 another financial institution to take over.

16 Similarly, Downing's home was not an asset that the Debtor had any legal right to
17 sell.

18 Under the long history and tradition of powers reserved to the States by the Tenth
19 Amendment, the power to enact laws regarding the ownership of real property are the
20 historical domain of the States. The Debtor may not agree with the laws passed by the
21 California legislature, but it cannot be allowed to waltz into Federal bankruptcy court,
22 and pretend as if those laws do not exist without incurring consequences.

23 **C. THE COURT WAS TRICKED INTO ACTING IN EXCESS OF ITS**
24 **STATUTORY AND CONSTITUTIONAL JURISDICTIONAL**
25 **AUTHORITY, AND THE MERE STATUTORY PROTECTIONS OF 11**
26 **U.S.C. § 363(M) CANNOT STAND, OR ACT TO BAR RELIEF**

27 Under the various Due Process clauses found in both the Federal and California
28 constitutions, this Court lacked either the statutory or constitutional jurisdictional

1 authority to summarily deprive Downing of her fundamental property and liberty
2 interests, under California state law, to the ownership of her real property, without the
3 minimum due process steps of notice, and opportunity to be heard. The mere statutory-
4 level protections afforded to the Buyer by 11 U.S.C. § 363(m) cannot be interpreted to
5 magically consecrate such constitutional violations, or bar this Court from granting
6 Downing relief from the Due Process violations that the Debtor, its principals and its
7 lawyers tricked this Court into unwittingly committing.

8 The principals of the Debtor knowingly deceived the various governmental organs
9 of the State of California and County of Los Angeles into believing they were the lawful
10 owner's of Downing's Yorkshire property. By so doing, they wrongfully acquired and
11 recorded official records that made it appear as if the Debtor was, in fact, the lawful
12 owner.

13 The lawyers for the Debtor surely performed document review prior to accepting,
14 or filing into, the Debtor's underlying bankruptcy case. That review would have clearly
15 revealed Downing's contractual right to repurchase the Yorkshire property within the
16 Debtor's full 32-page Home Equity Sales Contract with Downing. Even if that document
17 review had not caught this fact, Downing's family members directly communicated
18 Downing's right to repurchase the home to both Andy Warshaw as counsel for the
19 Debtor, and to David Goodrich, as Chief Restructuring Officer for the Debtor.

20 Both the Debtor, its principals and its lawyers therefore knew, or reasonably
21 should have known, that the Debtor did not actually lawfully own the title to the
22 Yorkshire property. They also knew, or reasonably should have known, that under the
23 various Due Process clauses found in both the Federal and California constitutions, this
24 Court lacked either the statutory or constitutional authority to summarily deprive
25 Downing of her fundamental property and liberty interests under California state law to
26 the ownership of her real property, without the minimum due process steps of notice, and
27 opportunity to be heard.
28

1 Despite having this knowledge, the Debtor, its principals and their lawyers appear
2 to have knowing deceived this Court into believing the Debtor lawfully owned the title to
3 the Yorkshire property. They also failed to ensure Downing was served notice of the
4 bankruptcy case, and instead knowingly bullied her unsophisticated and naïve children
5 with frivolous threats of litigation, unless they agreed to summarily remove the mentally
6 incompetent Downing from her Yorkshire property without her lawful informed consent.
7 In so doing, they knowingly turned the entire process that led up this Court's order
8 approving the sale of the Yorkshire property into a literal fraud, in service of a result
9 legally definable as a crime under California law.

10 They also appear to have tricked this Court into approving a sale of real property
11 under circumstances that exceed this Court's statutory and constitutional jurisdictional
12 authority.

13 Under these circumstances, Downing's guardians argue that the statutory
14 protections offered to the Buyer by 11 U.S.C. §363(m) cannot stand, or be interpreted to
15 bar this Court from granting Downing relief from the Due Process violations that the
16 Debtor, its principals and its lawyers tricked this Court into unwittingly committing. The
17 Fifth and Fourteenth amendment prohibit Congress from enacting a statutory scheme that
18 is capable of functioning to summarily deprive a person of their real property, let alone
19 their fundamental property and liberty interests under State law, without the minimum
20 due process steps of notice, and opportunity to be heard. Accordingly, in the context
21 presented here, where fraudulent actions by the Debtor, its principals and its attorneys
22 deceived the Court into unwittingly consecrating such a serious violation of Downing's
23 constitutional rights, the mere statutory-level protections of 11 U.S.C. §363(m) cannot be
24 interpreted to permit that constitutional violation to survive.

**D. THE CONTRACT IS VOID DUE TO DOWNING’S INCOMPETENCE,
AND DOWNING IS ENTITLED TO THE RETURN OF HOME AS
FUNCTION OF LAW UNDER CALIFORNIA’S ELDER ABUSE ACT**

Under the legal capacity standards set forth in Cal. Prob. Code §§ 811 and 812, Downing has lacked the legal capacity to contract in matters regarding her finances, or the ownership of her home, since at least 2019. Accordingly, the Notice of Default Purchase Agreement and the Home Equity Sales Contract that R. Foster deceived Downing into signing on October 24 2020, as well as Downing’s purported conveyance of her home to the Debtor by a Grant Deed on October 31, 2020, should all be declared void ab initio.

Furthermore, Downing has the right to receive – and the Debtor has the obligation to give – her Yorkshire property back, pursuant to Cal. Welf. & Inst. § 15657.6. Whether the return of Downing’s Yorkshire property happens as a result of this Court cancelling the Sale and ordering the Debtor to return the deed to Downing, or ordering the Debtor, its principals and/or their attorneys to repurchase the Yorkshire property from the Buyer and deliver it back up to Downing, this Court cannot summarily dispose of Downing’s fundamental rights under California state law without the due process of prior notice, and opportunity to be heard.

California’s Elder Abuse and Dependent Adult Civil Protection Act (Cal. Welf. & Inst. Code §§ 15600 – 15675 *et seq.*) protects the real and personal property of mentally incompetent elderly Alzheimer’s patients like Downing from being “taken, secreted, appropriated, obtained, or retained” for a wrongful use, with intent to defraud, or by undue influence (*see* definition of “Financial abuse” of an elder, at WIC § 15610.30(a)).

“A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.” (WIC § 15610.30(b)). “A person or entity takes, secretes, appropriates,

1 obtains, or retains real or personal property when an elder or dependent adult is deprived
2 of any property right, including by means of an agreement, donative transfer, or
3 testamentary bequest, regardless of whether the property is held directly or by a
4 representative of an elder or dependent adult.” (WIC § 15610.30(c)).

5 “A person or entity that takes, secretes, appropriates, obtains, or retains, or assists
6 in taking, secreting, appropriating, obtaining, or retaining the real or personal property of
7 an elder or dependent adult when the elder or dependent adult lacks capacity pursuant to
8 Section 812 of the Probate Code, or is of unsound mind, but not entirely without
9 understanding, pursuant to Section 39 of the Civil Code, shall, upon demand by the elder
10 or dependent adult or a representative of the elder or dependent adult ... return the
11 property.” (WIC § 15657.6)

12 Wrongful use, intent to defraud, and undue influence describe the manner by
13 which the Debtor, by and through its principals, purportedly acquired “ownership” of
14 Downing’s Yorkshire property.

15 **E. THE CONTRACT IS VOID AS A FUNCTION OF STATE LAW**
16 **BECAUSE THE REPRESENTATIVE OF THE DEBTOR WHO**
17 **SOLICITED, INDUCED AND CAUSED DOWNING TO SIGN THE**
18 **CONTRACT HAD NO REAL ESTATE SALES LICENSE**

19 Pursuant to California Civil Code § 1695.17(a), possession of a valid and current
20 California Real Estate Sales License is a mandatory requirement for any representative of
21 an equity purchaser, “who in any manner solicits, induces, or causes any property owner
22 to transfer title or solicits any member of the property owner’s family or household to
23 induce or cause any property owner to transfer title to [a] residence in foreclosure to [an]
24 equity purchaser.” Cal. Civ. C. 1695.15(b)

25 Defendant Ray Foster, the 52% owner of Debtor and Defendant 2nd Chance
26 Investment Group LLC., personally solicited, induced, and/or caused both Downing, and
27 members of her family, including Nolan, to purportedly transfer the title to her home -
28

1 which was in foreclosure - to the Debtor. Accordingly, for those transactions to have been
2 lawfully valid, Ray Foster needed to possess a valid California Real Estate Sales License.

3 This Court can and should take judicial notice of two important facts that have been
4 officially published by the State of California's Department of Real Estate, and are
5 publically available in the DRE's online Public License Information database: (1) Ray
6 Foster has not had a valid California Real Estate Sales License since June 25, 1993. *See*
7 https://www2.dre.ca.gov/PublicASP/pplinfo.asp?License_id=01034335. (2) Mr. Foster's
8 wife, Defendant Sonja Foster, has a current and valid California Real Estate Broker's
9 license. *See* https://www2.dre.ca.gov/PublicASP/pplinfo.asp?License_id=01468409.

10 To be clear, Ray Foster was the personal field representative of Debtor 2nd Chance
11 in the purported "acquisition" of Downing's Yorkshire Drive property (and likely every
12 other property the Debtor has listed as an asset in the underlying bankruptcy proceeding).
13 Ray Foster's signature and initials are on all of the documents that the Debtor executed
14 with Downing;

15 Because Ray Foster was both the agent and employee of 2nd Chance who solicited,
16 induced and caused Downing to purportedly "transfer" the title to her home to the Debtor
17 on October 31, 2020, he was required to possess a valid California Real Estate Sales
18 License on that date.

19 Because Mr. Foster did not possess a valid California Real Estate Sales License on
20 that date Downing, by and through Guardians, wishes to and hereby does immediately
21 invoke her absolute right, pursuant to California Civil Code § 1695.7(b), to unilaterally
22 declare all of the October 31, 2020 contracts with the Debtor, and her ensuing transfer of
23 the title of her Yorkshire property to the Debtor, as void.

24 Downing therefore demands that the Debtor immediate return possession of the
25 Yorkshire property to her. If the Debtor no longer has possession of the Yorkshire
26 property, then Downing requests that the Debtor and/or its principals, Rayshon and Sonja
27 Foster be ordered to immediately re-acquire the Yorkshire property at whatever cost that
28 might require, and deliver it up to her.

1 **F. CRIMINAL ACT UNDER 1695.8: COMPLETELY MISREPRESENTED**
2 **NATURE OF TRANSACTION (1695.6(D)). ALSO, NEVER LEFT**
3 **PAPERWORK OR GAVE DOWNING CANCELTION NOTICE**
4 **PRIOR TO TRANSFERRING DEED (1695.6(A / B)).**

5
6 **G. VOID NO CONSIDERATION, AND CRIMINAL ACT UNDER 1695.13.**
7 **BEYOND KNOWINGLY CONTRACTING WITH ALZHEIMER'S**
8 **PATIENT, NEVER ACTUALLY PAID DOWNING ONE CENT, SO**
9 **CONTRACT NEVER PERFECTED (SUSPECT CLAIMED 300K**
10 **PURCHASE PRICE IS PART OF DEFRAUDING FINANCIAL**
11 **INSTITUTION/INVESTORS / CREDITORS).**

12
13 **H. VOIDABLE UNDER 1695.14 UNCONSCIONABLE ADVANTAGE;**
14 **TWO-YEAR STATUTE FOR RECESSION – IF DOWNING CHOSE**
15 **THE RECESSION ROUTE - IS TOLLED DUE TO DOWNING'S**
16 **INCOMPETENCE**

17 **I. DEBTOR CANNOT CLAIM BREACH OF "LEASE" PAYMENTS**
18 **VOIDED CONTRACT AND CREATED RIGHT TO SELL**

19 Debtor waived their purported CONTRACTUAL right TO ANY payments by frustrating
20 and making performance of payment impossible (also, fraud the entire time – payments
21 sent to principals, not to debtor).

22 **J. COUNSEL FOR DEBTOR AND CRO GOODRICH ADVISED BY**
23 **FAMILY OF FACTS.**

24 knew Downing incompetent, knew debtor DIDN'T OWN HOME AS A FUNCTION OF
25 LAW, & knew debtor had FRUSTRATED performance & thus waived right to
26 payments. Proceeded to threaten family anyway, & withhold documents from the court.
27 at minimum, Breached duty of candor to the Court (fraud). Likely criminal actS under
28 CA WIC 15610.30. (a)(1-3); COurt cannot allow its process to perfect criminal action.

**K. DOWNING'S TENANCY NEVER LAWFULLY QUIT OR
TERMINATED. BUYER DEFRAUDED – BOUGHT HOUSE WITH
EXISTING TENANCY RIGHTS.**

L. MANIFEST INJUSTICE

ALZHEIMER'S patient who was not competent to contract in the first place, now sentenced to enduring endless suffering / confusion for rest of life (from strange surroundings) due to criminal acts by debtor, debtor's principal, debtor's counsel, and possibly CRO. Victim has no ability to adjust, so no financial compensation can cure the injury. specific performance of return of home required by law and equity. debtor did not pay 1 cent for home, and never lawfully owned the title to begin with. never transferred mortgage out of debtor's name, suggesting entire transaction fraudulent. debtor's principal then impersonated victim to selene in order to isolate victim and family from information about what they were doing. on top of grand theft real estate, debtor's principals further stole over \$30,000 from victim, in deceitful manner designed to obfuscate transaction, likely to hide assets from IRS and debtor's creditors. debtor's principals have abused debtor as a vehicle for their real estate and financial frauds, and have now been abusing bankruptcy process and the court as the ultimate instrument to legally perfect their innumerable crimes. the function of law and courts are to work justice. permitting this outcome would be manifestly unjust.

**M. BALANCE OF EQUITIES REQUIRES CANCELATION OF SALE,
DESPITE 363(M) PROTECTIONS.**

Debtor never owned the home, and debtor absolutely obligated / Downing absolutely Entitled to return of home as function of law under both home equity sales contract law and elder abuse act. Home must be returned by either (i) cancelation of sale, or (II) compelled re-purchase of home from buyer, and deliver it up to downing. Option II means less assets available to creditors. ergo, balance of equities requires immediate cancelation of sale

1 **N. BUYER'S PROPER REMEDY TO RECOVER FINANCIAL LOSSES IS**
2 **TO (I) FILE AP SUIT AGAINST DEBTOR, PRINCIPALS OF DEBTOR,**
3 **AND COUNSEL FOR DEBTOR AND PRINCIPALS.**
4 **ALTERNATIVELY, (II) MOVE FOR SUMMARY SANCTIONS**
5 **AGAINST DEBTOR AND THEIR COUNSEL.**

6
7 **IV. PRAYER**

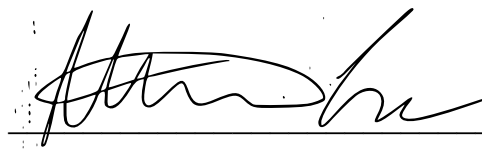
8 Downing, by her co-guardians ad litem, prays that this Court causes her Yorkshire
9 property to be returned to her proper ownership, and to the extent possible, and her
10 substantial pending claim for damages against the Debtor be ruled non-dischargeable in
11 the underlying bankruptcy proceeding.

12 Downing further prays that during the pendency of this motion, the Court issue an
13 injunction and/or stay to prevent the Buyer from re-selling her Yorkshire property, or any
14 of the Debtor's creditors from accepting payments on the liens against that property.

15
16 Submitted this 4th day of December 2023

17
18 

19
20 Geoff Trapp

21
22 

23
24 Athena Lee

25
26 *Next Friends to and [proposed] co-guardians ad litem for Plaintiff Clotee Downing*
27
28